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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 01, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANGEL S.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO: 1:24-CV-3020-RMP

ORDER GRANTING PLAINTIFF'S
BRIEF AND REMANDING FOR
ADDITIONAL PROCEEDINGS

BEFORE THE COURT, without oral argument, are briefs from Plaintiff Angel S.¹, ECF No. 6, and Defendant the Commissioner of Social Security (the "Commissioner"), ECF No. 8. Plaintiff seeks judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner's denial of her claim for Social Security Income ("SSI") under Title XVI of the Social Security Act (the "Act"). *See* ECF No. 6 at 1–2.

¹ In the interest of protecting Plaintiff's privacy, the Court uses Plaintiff's first name and last initial.

1 Having considered the parties' briefs, the administrative record, and the
2 applicable law, the Court is fully informed. For the reasons set forth below, the
3 Court grants judgment for Plaintiff and remands the matter for further proceedings
4 before the Commissioner.

5 **BACKGROUND**

6 Plaintiff applied for SSI on approximately July 20, 2019, alleging disability
7 onset on June 1, 2016. Administrative Record ("AR")² 220–26. After Plaintiff's
8 application was denied initially and on reconsideration, Plaintiff requested a hearing.
9 AR 32, 203–19. Plaintiff's mother initially applied on Plaintiff's behalf; Plaintiff
10 was fifteen years old on the date of application. AR 220. Plaintiff sought disability
11 benefits on the basis that she has depression, post-traumatic stress disorder, and
12 anxiety. AR 206. On September 17, 2020, Plaintiff's case was transferred to the
13 National Hearing Center in Falls Church, Virginia. AR 175. On January 5, 2021,
14 the National Hearing Center scheduled a telephonic hearing for March 24, 2021.
15 AR 156. This notice was in English and Spanish, as were subsequent notices from
16 the Commissioner. *See* AR 145–65. On March 10, 2021, the agency sent Plaintiff
17 and her attorney, Tim Anderson, a reminder about the scheduled telephonic hearing.
18 AR 129. The notice warned that the ALJ could dismiss Plaintiff's request for a
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² The Administrative Record is filed at ECF No. 4.

1 hearing if Plaintiff did not attend the hearing “without a good reason for not
2 attending.” AR 129.

3 On March 17, 2021, through counsel Tim Anderson, Plaintiff requested
4 postponement of the hearing to allow her to appear at the hearing in person. AR
5 126. The Social Security Administration was not then conducting hearings in person
6 due to the COVID-19 pandemic, so the agency delayed scheduling Plaintiff’s
7 hearing. AR 107–09.

8 By notice dated November 17, 2022, the National Hearing Center rescheduled
9 Plaintiff’s hearing for her to appear in person, with the hearing examiner appearing
10 by video, in Seattle, Washington on February 15, 2023. AR 74–75. Under the
11 heading, “It Is Important That You Attend Your Hearing,” the notice informed
12 Plaintiff: “If you do not attend the hearing, I may dismiss your hearing, without
13 further notice, unless I find that you have a good reason for not attending.” AR 74.
14 Under the same heading, the notice informed Plaintiff that she was permitted to ask
15 the agency to appear by telephone, adding: “We will schedule you to appear by
16 telephone if we find that it is not possible for you to attend in person or by video
17 teleconference, or other extraordinary circumstances prevent you from attending in
18 person or by video conference.” AR 74. The notice informed Plaintiff that the
19 hearing would be conducted by video teleconference, with Plaintiff appearing at the
20 address provided in Seattle and the ALJ appearing from another location. AR 75.
21 Next, under a heading titled “If You Cannot Attend Your Scheduled Hearing,” the

1 agency requested that Plaintiff “call” the Office of Hearing Operations
2 “immediately” if she is not able to attend the hearing at the time and place set by the
3 notice. AR 75. In addition, the agency informed Plaintiff that she could ask for a
4 change in the time or place of her hearing. AR 76. The request for a change in the
5 time or place of the hearing must be “in writing” and must state the reason for the
6 requested change. AR 76. With respect to the timing of the request for a change,
7 and the standard that the ALJ would apply, the notice stated:

8 You must ask for this change before the earlier of the two dates
9 described below. The first date is 30 days after you receive this notice.
10 The second date is 5 days before the date of your hearing. We assume
11 you received this notice 5 days after the date on it unless you show us
12 that you did not get it within the 5-day period. If you miss the
deadline for requesting a change, please tell me why you missed the
deadline. I will consider your request to change the time or place of
the hearing if I find that you have a good reason, as defined in our
regulations, for missing the deadline.

13 In considering your request to change the time or place of the hearing,
14 I will decide whether you have a good reason for requesting the
15 change. If I find you have a good reason for your request, we will set
a new time and place for your hearing. We will also send another
notice giving you the new time and place of your hearing. We will
send this notice at least 20 days before the date of the new hearing.

16 AR 76.

17 Later in the notice, under the heading “Travel Costs,” the notice informs
18 Plaintiff:

19 We can pay certain travel costs when you, your representative, or
20 needed witnesses must travel more than 75 miles to the hearing. A
sheet is enclosed to tell you about our rules for paying travel costs.
21 Please call this office if you want more information.

1 AR 79. On the enclosed information sheet, the agency specified that when a
2 claimant must travel more than 75 miles one way from home to attend the hearing,
3 the agency can pay expenses such as the cost of a bus ticket or driving expenses.
4

5 AR 80. The information sheet further informs that “[i]n certain circumstances, you
6 may need meals, lodging, or taxicabs” and that these expenses, unlike the bus
7 ticket or driving expenses, must be approved by the ALJ before the hearing unless
8 these costs are “unexpected and unavoidable.” AR 80. For bus ticket and driving
9 costs, a claimant “must submit a written request for payment . . . to the ALJ at the
10 time of the hearing or as soon as possible after the hearing.” AR 80.

11 By letter dated February 9, 2023, Plaintiff’s counsel requested to convert the
12 hearing to a telephonic or Microsoft Teams video hearing from Plaintiff’s residence
13 due to Plaintiff’s “transportation and financial hardship” and counsel’s other hearing
14 commitments. AR 39. Counsel added, “Both the client, her mother, and myself
15 would have to travel over 2 1/2 hours over a mountain pass.” AR 39.

16 On February 9, 2023, Administrative Law Judge David Begley informed
17 Plaintiff’s counsel that Plaintiff’s request to change the manner of hearing Plaintiff’s
18 claim was denied, noting: “The current hearing was scheduled in November 2022,
19 over two months ago, specifically as an in person at the claimant [sic] and your
20 request. The appropriate time to request and change would have been well in
21 advance of one week before the hearing.” AR 38. On the same date, Plaintiff

1 responded by letter asking ALJ Begley to reconsider his decision to deny Plaintiff's
2 request to change the manner of hearing. AR 37. Plaintiff asserted that she had
3 moved from Kittitas, Washington, to Yakima, Washington, since the time the
4 hearing was scheduled and faced "vehicular difficulty of having to travel over a
5 mountain pass both ways" as well as a lack "of funds to travel." AR 37. Plaintiff
6 added that if ALJ Anderson "strongly desire[d] to visually see her," she requested
7 permission to appear by Microsoft Teams or by appearing at the local
8 videoconferencing location in Yakima. AR 37.

9 In a letter dated February 13, 2023, ALJ Begley reiterated that: (1) Plaintiff's
10 hearing originally was scheduled by telephone for March 24, 2021, and was
11 rescheduled at Plaintiff's request as an in-person hearing; and (2) Plaintiff should
12 have requested any change to the current hearing "well in advance of one week
13 before" the scheduled hearing date. AR 36. In addition, ALJ Begley wrote that the
14 agency had no notification from Plaintiff of a change in address, and the "untimely"
15 nature of Plaintiff's request did not leave the agency sufficient time to "make
16 appropriate accommodations." AR 36.

17 Plaintiff's counsel sent a letter dated February 13, 2023, updating Plaintiff's
18 address to her residence in Yakima, Washington. AR 35. Then, in a letter dated
19 February 15, 2023, Plaintiff's counsel indicated that Plaintiff and her mother were
20 "not able to travel across the pass to the hearing today," but Plaintiff and counsel
21 were available for the scheduled hearing by telephone or by Microsoft Teams. AR

1 34. Alternatively, Plaintiff requested a postponement to reschedule the hearing by
2 telephone or by video at the agency’s videoconferencing location in Yakima. AR
3 34.

4 Neither Plaintiff nor her attorney attended the hearing on February 15, 2023.
5 AR 32. On March 2, 2023, ALJ Begley issued an order of dismissal of Plaintiff’s
6 request for hearing. AR 32–33 (hereinafter, “Order of Dismissal”). ALJ Begley
7 memorialized that he considered the factors set forth in 20 C.F.R. § 416.1457(b)(2),
8 without discussing the factors, and found no good cause for Plaintiff’s failure to
9 appear at the time and place of the hearing. AR 32–33.

10 The Appeals Council denied Plaintiff’s request to review the ALJ’s dismissal.
11 AR 1–2.

12 Through counsel, Victoria Chhagan, Plaintiff sought review in this Court.
13 ECF No. 1.

14 **ISSUE ON APPEAL**

15 Plaintiff raises the following issue regarding the ALJ’s decision:

16 1. Did the agency deny Plaintiff due process in dismissing Plaintiff’s
17 request for a hearing?

18 ***Hearing Denial***

19 **Parties’ Arguments**

20 Plaintiff argues that the ALJ’s decision to dismiss Plaintiff’s hearing request
21 was flawed on Constitutional due process grounds. ECF No. 6 at 4. Plaintiff argues
that the ALJ should have found good cause for Plaintiff to miss her hearing given

1 that she informed the ALJ in advance that the trip to Seattle would pose a hardship
2 for Plaintiff and her mother. *Id.* at 10. Plaintiff argues that the ALJ should have
3 considered that Plaintiff lived approximately 140 miles from the Seattle hearing
4 location and only a short distance from the Yakima video conference location,
5 particularly when the agency “typically does not require individuals to travel more
6 than 75 miles for a hearing.” *Id.* at 10–11 (citing HALLEX 1-2-0-70). Plaintiff
7 adds that the ALJ did not refer to any authority setting forth what constitutes a
8 reasonable time in which to request a change of the manner of the hearing, even
9 though he based his denial of Plaintiff’s hearing on her untimely request. *Id.* at 11.
10 Furthermore, Plaintiff argues that the ALJ did not account for Plaintiff’s mental
11 impairments and language abilities that could affect her ability to communicate with
12 the ALJ and her attorney. Plaintiff points to records indicating that: she applied for
13 SSI benefits based on alleged depression, anxiety, and post-traumatic stress disorder;
14 she received notices in both English and Spanish; and “the earlier notices are
15 addressed to [Plaintiff’s] mother on her behalf, suggesting that she was a
16 child/young adult with a language barrier applying for benefits on the basis of
17 mental impairments during the relevant period[.]” ECF No. 6 at 15 (citing AR 3,
18 213, 217, and 220).

19 The Commissioner argues in response that claimants must object to appearing
20 by video teleconferencing within 30 days after the claimant receives the hearing
21 notice and must object to the time and place of the hearing “at the earliest possible
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1 opportunity, but not later than 5 days before the date set for the hearing or 30 days
2 after receiving notice of the hearing, whichever is earlier[.]” ECF No. 8 at 4–5.
3 (citing 20 C.F.R. § 416.1436(d), (e)). The Commissioner continues that Plaintiff
4 was represented by an attorney throughout the relevant timeframe, and Plaintiff
5 received notices in both English and Spanish. *Id.* at 5 (citing AR 34, 53–73, 203).
6 The Commissioner cites to the notices in the record that informed Plaintiff that if she
7 did not attend the hearing, the ALJ ““may dismiss your request for hearing, without
8 further notice, unless he or she finds that you have a good reason for not attending.””
9 *Id.* at 6 (citing AR 43, 53). Further, the Commissioner argues that Plaintiff does not
10 show that any of the factors listed in 20 C.F.R. § 416.1457(b)(2) prevented Plaintiff
11 from attending her hearing and instead indicates that transportation difficulties were
12 the reason she did not attend, which does not qualify as good cause under the
13 regulation. *Id.* (citing ECF No. 6 at 6–8, 13, 15–16; AR 24, 37, 39). The
14 Commissioner submits that both before and after Plaintiff’s change of address from
15 Kittitas to Yakima, travel likely would involve driving over Snoqualmie Pass to
16 reach Seattle and that the weather information from the day of the hearing showed
17 freezing temperatures, but no precipitation. *Id.* at 7 (citing AR 9–19). Lastly, the
18 Commissioner asserts that “the agency offers to pay travel expenses such as the cost
19 of a bus ticket, expenses for driving, meals, and lodging.” *Id.* (citing AR 80).

20 Plaintiff replies that she did not contest either the time or place of the hearing
21 and instead requested an accommodation that would not have been burdensome and

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1 would have allowed her to avoid traveling “140 miles over a mountain pass in the
2 winter to the [video teleconferencing] site in Seattle.” ECF No. 9 at 3. Plaintiff
3 further argues that the hearing notice states on its first page that claimants may
4 request to appear by telephone and that the hearing will be scheduled telephonically
5 “if we find that that it is not possible for you to attend in person or by video
6 teleconference, or other extraordinary circumstances prevent you from attending in
7 person or by video teleconference.” *Id.* (quoting AR 53–54). Plaintiff argues that
8 the notice does not provide a time limit for submitting this request. *Id.* Plaintiff
9 adds that the same notice provides, under the heading “If You Cannot Attend Your
10 Scheduled Hearing,” a different procedure for requesting a change in the time or
11 place of the hearing and adheres to the rules at 20 C.F.R. § 416.1436(e) and 20
12 C.F.R. § 416.1411. *Id.* Plaintiff asserts that it would not have been burdensome for
13 the ALJ to conduct the hearing telephonically or by video over Microsoft Teams,
14 since those formats “have become the norm” since the COVID-19 pandemic, or to
15 proceed with the video teleconference format with Plaintiff appearing at the Yakima
16 video teleconference office “located one mile from her residence with the
17 understanding that a postponement might be required due to scheduling conflicts.”
18 *Id.* Plaintiff further replies that the Commissioner did not address her argument that
19 her young age and/or mental impairments impeded her ability to communicate with
20 the agency and her attorney about her ability to physically travel to Seattle to attend
21 the video teleconference hearing. *Id.* at 5. Furthermore, Plaintiff contends that the

1 Commissioner misses the point by citing to a lack of precipitation over Snoqualmie
2 Pass on the hearing date because Plaintiff “did not drive and was reliant on her
3 mother, who felt unsafe driving her car over the pass in the winter.” *Id.* at 5–6.
4 Plaintiff further submits that she “reasonably believed that she would be responsible
5 for the payment” of her expenses to travel to the hearing when the ALJ must
6 approve travel expenses prior to the hearing, and the ALJ did not indicate that he
7 approved reimbursement for Plaintiff’s expenses even after she had informed the
8 ALJ that she could not pay for gas. *Id.* (citing AR 59).

9 Legal Standard

10 An ALJ is authorized to dismiss a hearing request if a claimant and her
11 representative fail to appear at the scheduled hearing after receiving notice that
12 failure to appear at the time and place of the hearing could result in dismissal
13 without further notice, and an ALJ finds no good cause for the failure to appear. 20
14 C.F.R. § 416.1457(b)(1). This decision to dismiss a hearing after a claimant fails to
15 appear generally is not a final decision that is subject to judicial review. *See* 42
16 U.S.C. § 405(g) (authorizing judicial review of “any final decision of the
17 Commissioner of Social Security made after a hearing.”); 20 C.F.R. § 416.1403(a)
18 (listing administrative actions that are not subject to judicial review); *Johnson v.*
19 *Berryhill*, Case No. C17-0277-MAT, 2017 U.S. Dist. LEXIS 103025, at *6, 2017
20 WL 2834286 (W.D. Wash., June 29, 2017) (“[W]here a claimant fails to appear for a
21 scheduled hearing, he fails to exhaust “the administrative remedy upon which

1 judicial review depends[,]” and there is no final decision by the Commissioner.”)
2 (quoting *Subia v. Comm’r of Soc. Sec.*, 264 F.3d 899, 902 (9th Cir. 2001) (quoting
3 *Hoye v. Sullivan*, 985 F.2d 990, 991 (9th Cir. 1992)).

4 However, the judicial review provision in section 405(g) “contains two
5 separate elements: first, a ‘jurisdictional’ requirement that claims be presented to the
6 agency, and second, a ‘waivable . . . requirement that the administrative remedies
7 prescribed by the Secretary be exhausted.’” *Smith v. Berryhill*, 139 S. Ct. 1765,
8 1773–74 (2019) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 328 (1976)).

9 The Supreme Court has found that while section 405(g)’s “final decision . . .
10 made after a hearing” reference ordinarily signifies “an ALJ hearing,” “an ALJ
11 hearing is not an ironclad prerequisite for judicial review.” *Smith*, 139 S. Ct. at
12 1774, 1777 n. 17 (“[T]he Court’s precedents also make clear that a hearing is not
13 always required.”). Rather, beyond the text of section 405(g), the Supreme Court
14 identified a strong presumption that Congress intends judicial review and
15 constructed the Social Security Act as a “claimant-protective statute.” *Id.* at 1776–
16 77. When the presentment requirement is satisfied, judicial review of a decision to
17 dismiss for failure to appear at a hearing may be available where the Commissioner
18 waives the non-jurisdictional requirement of jurisdiction. *See Wilson v. Comm’r of*
19 *Soc. Sec.*, No. 21-10278, 2021 U.S. App. LEXIS 26245, at *8, 2021 WL 3878252, at
20 *3 (11th Cir. Aug. 31, 2021) (per curiam) (analyzing *Smith*, finding “grounds to
21 conclude” that Plaintiff satisfied the exhaustion requirement where he failed to

1 appear at the scheduled ALJ hearing, and holding that it was unnecessary to decide
2 whether there had been a “final decision . . . made after a hearing” because the
3 Commissioner expressly waived any objection on exhaustion grounds); *T.W. v.*
4 *Comm’r of Soc. Sec.*, Case No. 21-cv-7822-SVK, 2023 U.S. Dist. LEXIS 28877, at
5 *7–8, 2023 WL 2167398 (N.D. Cal. Feb. 21, 2023) (interpreting the Supreme
6 Court’s decision in *Smith* and the Eleventh Circuit’s decision in *Wilson* to support
7 exercising subject matter jurisdiction where Plaintiff withdrew his request for a
8 hearing before the hearing had completed, the ALJ dismissed on that basis, and the
9 Commissioner waived reliance on the exhaustion requirement).

10 Analysis

11 The Commissioner does not raise subject matter jurisdiction as an issue in his
12 brief to this Court and instead defends the ALJ’s dismissal of Plaintiff’s request for
13 hearing on its merits. ECF No. 8. The Court interprets the Commissioner’s position
14 as a waiver of the exhaustion requirement. Moreover, the nonwaivable jurisdiction
15 requirement of presentment is established where, as here, a claimant submitted an
16 application for disability benefits and asserts that she had good cause for failing to
17 appear at the ALJ hearing. *See Wilson*, 2021 U.S. App. LEXIS 26245 at *7 (“The
18 Commissioner readily concedes that [claimant] ‘clearly satisfie[d] the nonwaivable
19 ‘presentment’ requirement,’ which is jurisdictional, by submitting applications for
20 disability benefits and arguing that he presented good cause for failing to appear at
21 the ALJ hearing.”). Therefore, this Court has jurisdiction under section 405(g) to

1 review the Appeals Council's decision to deny review of the ALJ's dismissal of
2 Plaintiff's request for a hearing.

3 Proceeding to the issue of an alleged due process violation, Plaintiff must
4 demonstrate: "(1) a deprivation of a constitutionally protected liberty or property
5 interest, and (2) a denial of adequate procedural protections." *Kildare v. Saenz*, 325
6 F.3d 1078, 1085 (9th Cir. 2003). Courts have recognized that applicants for Social
7 Security disability benefits are entitled to due process in the determination of their
8 claims and have a property interest in those benefits. *Holohan v. Massanari*, 246
9 F.3d 1195, 1209 (9th Cir. 2001). The Ninth Circuit further has observed that "[i]t is
10 axiomatic that due process requires that a claimant receive meaningful notice and an
11 opportunity to be heard before [her] claim may be denied." *Udd v. Massanari*, 245
12 F.3d 1096, 1099 (9th Cir. 2001) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333
13 (1976)). One specific obligation is for an ALJ is to provide "some explanation . . .
14 of why the applicant's potentially valid reasons for good cause are rejected." *Dexter
15 v. Colvin*, 731 F.3d 977, 981 (9th Cir. 2013).

16 The hearing notice sets forth a convoluted set of different standards and
17 methods for requesting various relief related to the scheduled hearing. AR 74–75.
18 First, the hearing notice informs Plaintiff that she can request a hearing by telephone
19 and does not state a deadline or whether a request should be communicated in
20 writing or orally. AR 74 (informing Plaintiff that she is permitted to ask the agency
21 to appear by telephone and stating, "We will schedule you to appear by telephone if

1 we find that it is not possible for you to attend in person or by video teleconference,
2 or other extraordinary circumstances prevent you from attending in person or by
3 video conference.”). The ALJ’s Order of Dismissal reasoned that Plaintiff’s
4 attorney’s request “was not timely,” but does not address whether it was “possible”
5 for Plaintiff or her attorney to attend in person or by video conference or whether
6 “extraordinary circumstances” prevented Plaintiff from attending in person or by
7 video conference, as the notice sets forth. *See* AR 32. Therefore, the Order of
8 Dismissal does not address the standards that the notice indicated apply to a request
9 for a hearing by telephone.

10 In addition, the notice informs Plaintiff that she should “call [the hearing]
11 office immediately” if she is unable to attend the hearing at the time and place it was
12 set while also instructing Plaintiff to “request . . . in writing” any “wish to change
13 the time and place” of the hearing. AR 75–76. The hearing notice set a deadline for
14 requesting a change of the earlier of either: “30 days after you receive the notice” or
15 “5 days before the date of your hearing.” AR 76. The ALJ’s Order of Dismissal
16 stated that Plaintiff’s request to change Plaintiff’s hearing to a telephonic hearing, or
17 in the alternative to a video teleconference hearing from a different location at a later
18 date if necessary, was “untimely.” AR 32.

19 However, as stated above, to the extent that Plaintiff merely was requesting a
20 telephonic hearing, the notice does not indicate that these deadlines apply.
21 Furthermore, to the extent that Plaintiff was requesting a change in the time or place
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1 of her hearing in the alternative, it is unclear from the record when Plaintiff and her
2 attorney received the hearing notice for the February 15, 2023 hearing, and Plaintiff
3 made her request to change the manner of the hearing on February 9, 2023, six days
4 before the scheduled hearing date. AR 37. Therefore, the Court cannot find
5 substantial evidence supporting that Plaintiff's request was untimely. Moreover, the
6 Court notes that, earlier in Plaintiff's case, the agency postponed Plaintiff's hearing
7 to accommodate Plaintiff's request for an in person hearing and did not take issue
8 with Plaintiff making the request within one week of the scheduled hearing date.
9 AR 107–09, 126. In other words, the agency's actions within the context of
10 Plaintiff's case may not have put Plaintiff and her attorney on notice that a request
11 made six days before a scheduled hearing is untimely.

12 Third, the regulations and the notice that Plaintiff received state that the ALJ
13 will consider whether Plaintiff has good cause for requesting a change in the time or
14 place of her hearing. *See* AR 76; 20 C.F.R. § 416.1436. A lack of readily available
15 transportation is one of the enumerated circumstances that a claimant can refer to in
16 requesting a change in the time or place of the hearing. 20 C.F.R. §
17 416.1436(f)(2)(v). Although Plaintiff's attorney's requests to reschedule her hearing
18 as telephonic refer to Plaintiff's travel difficulties, the ALJ did not explain why
19 Plaintiff's travel difficulties were not good cause in his Order of Dismissal. AR 31–
20 33, 37.

1 Fourth, before dismissing a request for hearing, the agency's regulations
2 require an ALJ to consider "any physical, mental, educational, or linguistic
3 limitations (including any lack of facility with the English language)" that the
4 claimant has, and the regulation does not distinguish between claimants who are
5 represented by counsel and those who are not. 20 C.F.R. § 416.1457(b)(2). The
6 ALJ's Order of Dismissal contains a bare assertion that he considered the factors set
7 forth in 20 C.F.R. § 416.1457(b)(2), without any discussion of any physical, mental,
8 educational, or linguistic limitations of Plaintiff even though the record indicates that
9 Plaintiff may have several. *See AR 3, 32, 213, 217, and 220.* Without any
10 substantive discussion demonstrating that the ALJ considered the factors in section
11 416.1457(b)(2), the Court cannot determine that the ALJ considered all of Plaintiff's
12 "potentially valid" bases for good cause. *See Dexter, 731 F.3d at 981.*

13 Conclusion

14 The ALJ's failure to apply the standards applicable to requests for a hearing
15 by telephone and to address potential bases for good cause before dismissing
16 Plaintiff's hearing request violated due process. Accordingly, the Court will reverse
17 the Appeals Council's denial of Plaintiff's request for review and remand this matter
18 to the agency for further proceedings.

19 Accordingly, **IT IS HEREBY ORDERED:**

20 1. Plaintiff's Brief, **ECF No. 6**, is **GRANTED**.
21 2. Defendant the Commissioner's Brief, **ECF No. 8**, is **DENIED**.

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3. The decision of the Commissioner is **REVERSED**, and this matter is **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g), for further proceedings.

4. Judgment shall be entered for Plaintiff.

IT IS SO ORDERED. The District Court Clerk is directed to enter this Order, enter judgment as directed, provide copies to counsel, and **close the file** in this case.

DATED August 1, 2024.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
Senior United States District Judge